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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,964	02/17/2004	Stanley C. Valiulis	502580	9115

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EXAMINER
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SCHULTERBRANDT, KOPI A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/779,964

Applicant(s)

VALIULIS ET AL.

Examiner

Kofi A. Schulerbrandt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This Second Office Action is in response to Applicant's Amendment received in the Office on October 12, 2004 in this case.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garfinkle (4,662,592), in view of Hollingsworth et al. (5,407,106). Garfinkle teaches, substantially, each feature of the claimed invention as shown below. Garfinkle teaches an interior chamber, but does not teach an interior chamber having a horizontal width less than or substantially equal to the thickness of the vertical support.

Hollingsworth et al., however, teaches an interior chamber less than the width of the vertical support (See col. 13, lns. 48-56). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified, for example, Garfinkle's second portion to jut inward toward the board as taught by Hollingsworth forming a chamber to be less than the width of the vertical support in order to more securely fasten the bracket to the vertical support. It would further have been obvious to one of ordinary skill to form the interior chamber to be various widths in order to fit over various vertical support thicknesses as thicker vertical supports could support more weight than thinner

supports, the interior chamber being made appropriately thick to accommodate the width of the chosen vertical support thickness. Moreover, Applicant has not positively recited the vertical support. Therefore no weight is given to the dimensional relationship between the chamber and the vertical support which is not recited. In other words there is no way to determine the claimed dimensional relationship without the vertical support.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garfinkle (4,662,592), in view of Hollingsworth et al. (5,407,106) and Gibitz (4,441,619). Garfinkle teaches, substantially, each feature of the claimed invention as shown below. Garfinkle does not teach an interior chamber having a horizontal width less than or substantially equal to the thickness of the vertical support or a lower portion of the plate extending below the inner surface of the first portions. Hollingsworth et al., however, teaches an interior chamber less than the width of the vertical support (See col. 13, Ins. 48-56) and Gibitz teaches the claimed plate lower portion (121) below the first and second portions. It would have been obvious to one of ordinary skill in the art at the time of invention to have formed Garfinkle's chamber to be less than the width of the vertical support in order to more securely fasten the bracket to the vertical support. It would have been obvious to one of ordinary skill to form the interior chamber to be various widths in order to fit over various vertical support thicknesses (including the claimed thickness range) as thicker vertical support could support more weight than a thinner support, the interior chamber being made appropriately thick to accommodate the width of the chosen vertical support thickness. Furthermore, it would have been

obvious to have modified Garfinkle's plate to have included the claimed lower portion as taught by Gibitz in order to better stabilize the invention under load.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibitz (4,441,619), in view of Garfinkle (4,662,592), Hollingsworth et al. (5,407,106) and Barnes (4,452,360). Gibitz teaches, substantially, each feature of the claimed invention as shown below. Gibitz does not teach an interior chamber having a horizontal width less than or substantially equal to the thickness of the vertical support or forming from sheet metal. In addition, Gibitz teaches a prong vertically spaced from another prong, but does not teach a pair of prongs vertically spaced from a second pair. Garfinkle, however teaches a pair of prongs vertically spaced from a second pair of prongs, Hollingsworth et al. teaches an interior chamber less than the width of the vertical support (See col. 13, lns. 48-56) and Barnes teaches forming from sheet metal. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Gibitz to have a pair of prongs horizontally spaced as taught by Garfinkle to add more prongs and create more stability. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of invention to have formed Gibitz' chamber to be less than the width of the vertical support in order to more securely fasten the bracket to the vertical support as taught by Hollingsworth et al. Moreover, it would have been obvious to have formed Gibitz from a metal as Gibitz teaches a thin sheet-like dimension and metal would make the bracket strong. It would have been obvious to one of ordinary skill to form the interior chamber to be various widths in order to fit over various vertical support thicknesses (including the claimed thickness range) as thicker

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vertical support could support more weight than a thinner support, the interior chamber being made appropriately thick to accommodate the width of the chosen vertical support thickness.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-21 are rejected under the judicially created doctrine of double patenting over claims 1-12 of U. S. Patent No. 6,722,619 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

Bold claim recitations are extracted from the claim language of U.S. Patent No. 6,722,619.

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1. A mounting bracket for mounting a display hook to a vertical support having regularly spaced apertures, the mounting bracket comprising:

a plate having a front surface constructed to attach the display hook thereto;

a plate having a front surface constructed to attach the display hook thereto;

a pair of laterally spaced prongs connected to the plate for attaching the plate to the vertical support via the apertures, each of the prongs having a first portion extending rearwardly from the plate and a second portion extending downwardly from the first portion, the second portion having a vertical height less than or equal to a diameter of the apertures; a first pair of laterally spaced prongs positioned adjacent a top edge of the plate, each of the prongs having a first portion extending rearwardly and perpendicularly from the plate and a second portion extending downwardly and perpendicularly to the first portion from the first portion to a terminating end, the second portion having a vertical height less than or equal to a diameter of the apertures;

an interior chamber defined by the rear surface of the plate and the inner surfaces of the first and second portions of the prongs, the interior chamber having a horizontal width less than or substantially equal to the thickness of the vertical support such that the rear and inner surfaces firmly engage the vertical support and attach the mounting bracket thereto; and an interior chamber defined by the rear surface of the plate and at least two inner surfaces of the first and second portions of the prongs, the interior chamber having a horizontal width between the terminating ends and the rear surface of the plate less than or equal to the thickness of the vertical support such that

the rear and inner surfaces firmly engage the vertical support and attach the mounting bracket thereto; and

wherein the mounting bracket is made of and comprises a single unitary component part. 8. The mounting bracket of claim 1, wherein the bracket is of a unitary one-piece construction.

2. The mounting bracket of claim 1, wherein the horizontal width of the chamber is between about .230 to about .235 inches. 2. The mounting bracket of claim 1, wherein the horizontal width of the chamber is between about 0.230 to about 0.235 inches.

3. The mounting bracket of claim 1, wherein the horizontal width is less than the thickness of the vertical support. 15. The mounting bracket of claim 12, wherein the first portion of each prong extends a horizontal distance less than the thickness of the vertical support. 3. The mounting bracket of claim 1, wherein the horizontal width is less than the thickness of the vertical support.

4. The mounting bracket of claim 1, wherein the prongs compress the vertical support when attached thereto. 16. The mounting bracket of claim 12, wherein the prongs compress the vertical support when attached thereto. 4. The mounting bracket of claim 1, wherein the prongs compress the vertical support when attached thereto.

5. The mounting bracket of claim 1, wherein an upper portion of the plate extends above the inner surface of the first portion of the prongs to provide rotational stability. 17. The mounting bracket of claim 12, wherein an upper portion of the plate extends upwardly to a point equal to or above the first portion of the first pair of prongs to



provide rotational stability.. 5. The mounting bracket of claim 1, wherein an upper portion of the plate extends above the inner surface of the first portion of the prongs to provide rotational stability.

6. The mounting bracket of claim 1, wherein the prongs are integrally formed with the plate. 6. The mounting bracket of claim 1, wherein the prongs are integrally formed with the plate.

7. The mounting bracket of claim 1, wherein the bracket is stamp formed from sheet metal, wherein a generally uniform cross sectional thickness is provided throughout the mounting bracket. 7. The mounting bracket of claim 1, wherein the bracket is stamp formed from sheet metal.

8. The mounting bracket of claim 1, wherein the prongs are positioned adjacent a top edge of the plate. It would have been obvious to have claimed the foregoing subject matter in U.S. Patent No. 6,722,619.

9. The mounting bracket of claim 1, further comprising a second pair of laterally spaced prongs structured similarly to the first pair of prongs but vertically spaced therefrom, the inner surfaces of the first and second portions of the second pair of prongs defining a second chamber for receiving the vertical support therein. a second pair of laterally spaced prongs connected to the plate positioned vertically spaced from the first pair of prongs;

10. The mounting bracket of claim 9, wherein a lower portion of the plate extends below the inner surfaces of the first portions of the second pair of prongs to provide

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rotational stability. 11. The mounting bracket of claim 10, wherein the lower portion of the plate extends below the second portions of the second pair of prongs. a retention portion of the plate extending below the second pair of laterally spaced prongs, the retention portion disposed between the second pair of laterally spaced prongs; and

12. A mounting bracket for mounting a display hook to a vertical support having regularly spaced apertures, the mounting bracket comprising:

a plate having a front surface constructed to attach the display hook thereto; a plate having a front surface constructed to attach the display hook thereto;

a first and second pair of laterally spaced prongs connected to the plate for attaching the plate to the vertical support via the apertures, the first pair of prongs being vertically spaced above the second pair of prongs, each prong having a first portion extending rearwardly from the plate and a second portion extending downwardly from the first portion; the first portion of each prong extending rearwardly a distance less than or substantially equal to the thickness of the vertical support; the second portion of each prong having a vertical height less than or equal to a diameter of the apertures; and wherein the mounting bracket is stamped from sheet metal such that the plate and prongs have opposed generally flat sides with a generally uniform cross sectional thickness therebetween. a first pair of laterally spaced prongs positioned adjacent a top edge of the plate, each of the prongs having a first portion extending rearwardly and perpendicularly from the plate and a second portion extending downwardly and

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perpendicularly to the first portion from the first portion to a terminating end, the second portion having a vertical height less than or equal to a diameter of the apertures;

an interior chamber defined by the rear surface of the plate and at least two inner surfaces of the first and second portions of the prongs, the interior chamber having a horizontal width between the terminating ends and the rear surface of the plate less than or equal to the thickness of the vertical support such that the rear and inner surfaces firmly engage the vertical support and attach the mounting bracket thereto; and

a second pair of laterally spaced prongs connected to the plate positioned vertically spaced from the first pair of prongs;

a retention portion of the plate extending below the second pair of laterally spaced prongs, the retention portion disposed between the second pair of laterally spaced prongs; and

13. The mounting bracket of claim 12, wherein a rear surface of plate lies generally flush with vertical support. It would have been obvious to have included the foregoing features in U.S. Patent No. 6,722,619.

14. The mounting bracket of claim 12, wherein each prong includes an inner surface that timely engages the vertical support. an interior chamber defined by the rear surface of the plate and at least two inner surfaces of the first and second portions of the prongs, the interior chamber having a horizontal width between the terminating ends and the rear surface of the plate less than or equal to the thickness of the vertical support such that the rear and inner surfaces firmly engage the vertical support and attach the mounting bracket thereto; and

18. The mounting bracket of claim 12, wherein a lower portion of the plate extends below the inner surfaces of the first portions of the second pair of prongs to provide rotational stability. a retention portion of the plate extending below the second pair of laterally spaced prongs, the retention portion disposed between the second pair of laterally spaced prongs; and

19. A hanger assembly for attachment to a vertical support having regularly spaced apertures, the hanger assembly comprising:

a display hook having at least one horizontally extending arm; It would have been obvious to have included the foregoing features in U.S. Patent No. 6,722,619.

a mounting bracket for mounting the display hook to the vertical support via the apertures, the mounting bracket including a plate having a front surface constructed to attach the display hook thereto and a first and second pair of laterally spaced prongs connected to the plate, the first pair of prongs being vertically spaced above the second pair of prongs, each prong having a first portion extending rearwardly from the plate and a second portion extending downwardly from the first portion; the first portion of each prong extending rearwardly a distance less than or substantially equal to the thickness of the vertical support for secure attachment of the hanger assembly; the second portion of each prong having a vertical height less than or equal to a diameter of the apertures for attaching the hanger assembly to the vertical support without rotating the hanger assembly and disturbing the area above the hanger assembly; and

wherein the mounting back is stamped from sheet metal such that the plate and

prongs have opposed generally flat sides with a generally uniform cross sectional thickness

therebetween. It would have been obvious to have included the foregoing features in U.S. Patent No. 6,722,619.

20. The hanger assembly of claim 19, wherein an upper portion of the plate extends upwardly to a point equal to or above the first portion of the first pair of prongs to provide rotational stability. It would have been obvious to have included the foregoing features in U.S. Patent No. 6,722,619.

21. The hanger assembly of claim 19, wherein a lower portion of the plate extends below the inner surfaces of the first portions of the second pair of prongs to provide rotational stability. It would have been obvious to have included the foregoing features in U.S. Patent No. 6,722,619.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### **Examiner's Response to Applicant's Remarks**

Applicant's arguments filed on October 12, 2004 have been fully considered but they are not persuasive. Applicant has not positively recited the vertical support. Therefore no weight is given to the dimensional relationship between the chamber and

the vertical support which is not recited. In other words there is no way to determine the claimed dimensional relationship without the vertical support. Applicant argues the method of inserting onto the vertical support as being distinguishable, however, Hollingsworth has not been relied upon for the claimed chamber, but merely for the dimension. Moreover, Applicant has not responded to the double patenting rejection.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kofi A. Schulterbrandt whose telephone number is (703) 306-0096. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kofi Schulerbrandt  
November 12, 2004



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SUPERVISORY PATENT EXAMINER

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